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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-second session

SUMMARY RECORD OF THE 10th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 1 May 2000, at 3 p.m.

Chairperson: Mrs. BONOAN-DANDAN

CONTENTS

CONSIDERATION OF REPORTS

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Third periodic report of Portugal (continued)

MISCELLANEOUS MATTERS (continued)

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (continued)

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GE.00-41748 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6)

Third periodic report of Portugal (E/1994/104/Add.20) (continued)

1. At the invitation of the Chairperson, Mr. Mendonça e Moura, head of the Permanent Mission of Portugal to the United Nations Office at Geneva, took a place at the Committee table.

2. The CHAIRPERSON invited Mr. Mendonça e Moura to address the Committee.

3. Mr. MENDONÇA e MOURA (Portugal) said that he deeply regretted any inconvenience caused to the Committee at the previous meeting by the absence of a Portuguese delegation. He had already been in touch with the Office of the High Commissioner for Human Rights in order to clarify the situation, but he wished to explain to the Committee itself why no Portuguese delegation had appeared.

4. The Portuguese mission to the United Nations Office at Geneva had been informed in a note from the High Commissioner dated 6 December 1999 that the Committee would deal with the third periodic report of Portugal on 1 and 2 May 2000. At the beginning of February, he had personally dispatched a member of the Portuguese mission to explain to the Committee secretariat why that date was not possible and to ask for a postponement for a number of reasons. As Portugal would be occupying the Presidency of the European Union at that moment, a Portuguese delegation would accordingly be chairing and coordinating the representation of the Union in all matters involving human rights. Portugal would therefore be deeply involved in the work of the Commission on Human Rights. It would also be chairing the Preparatory Committee of the forthcoming Conference on Racism as well as responding to questions on the Portuguese report under the Convention against Torture.

5. The secretariat's response to the request for a postponement had been to suggest that Portugal should exchange dates with Italy, whose report was to be considered on 27 and 28 April. Those dates, however, were equally inconvenient, coinciding as they did with the last two days of the session of the Commission on Human Rights, when the voting on resolutions would be taking place. The mission had nevertheless contacted the Italian mission, which had in the event been unwilling to make the exchange. Also early in February, as an alternative solution, the Portuguese mission had suggested, without success, postponing consideration of the Portuguese report under the Convention against Torture. He had then done his best to make up three separate delegations to deal with what were essentially closely related matters. A delegation had been appointed to attend the Committee against Torture, and another to coordinate the position of the European Union at the Preparatory Committee for the Conference against Racism. When the time had come to appoint a delegation to attend the Committee on Economic, Social and Cultural Rights, it had become apparent that it would only be possible to send a four-man team, none of whom would be in a position to answer detailed questions on

health and education, matters which Portugal took very seriously. He had therefore personally advised the Department of Foreign Affairs in Lisbon not to send the proposed delegation but rather to ask for a postponement. A written message had accordingly been dispatched on 27 April 2000 requesting the Committee's indulgence and asking it to consider postponing its examination of the third periodic report. He regretted that, although the note in question had been signed and transmitted on the afternoon of 27 April, it had not been brought to the Committee's attention despite the personal efforts made at the time by the deputy head of the permanent mission.

6. He repeated that he regretted any inconvenience to the members of the Committee and emphasized that it was Portugal's deep interest in the rights set forth in the Covenant which made it unwilling to send a delegation that would be unable to answer all the Committee's questions satisfactorily. He again requested that the Committee postpone its consideration of Portugal's third periodic report.

7. Mr. RIEDEL said that a postponement would have a serious impact on the Committee's schedule. If it was suggested that the report should be considered at the extraordinary session to be held in August 2000, could the Mission undertake that Portugal would be prepared to attend on the agreed date?

8. Mr. MENDONÇA e MOURA (Portugal) said he would convey the proposed date immediately to the Department of Foreign Affairs in Lisbon. He believed that any date towards the end of the extraordinary session would be welcome. He noted that it would be very difficult for a delegation to attend in mid-August.

9. The CHAIRPERSON pointed out that the Committee's summer session was to end on 1 September. It would be impossible, therefore, to arrange for a September hearing. The Committee would bear in mind the Mission's preference for the end of August.

10. Mr. GRISSA said he believed that six countries were scheduled to appear at the summer session. Was there any possibility that one of those countries might not come? Could there be some standby arrangement?

11. Mr. SADI said that if the Committee agreed to postpone consideration of the Portuguese report for some six months, could the current report be updated in the meantime? That would make the exercise more valuable to both parties.

12. Mr. MENDONÇA e MOURA (Portugal) said that the Portuguese delegation would of course do its best to bring with it any available updated information.

13. The CHAIRPERSON said that the members of the Committee would continue their deliberations among themselves and their decision would be conveyed to the Portuguese mission in due course.

14. Mr. Mendonça e Moura (Portugal) withdrew.

15. Mr. WIMER ZAMBRANO said that the detailed apology offered by the head of the Portuguese mission made it unnecessary to discuss the matter further. The Committee could decide at once whether or not the suggested date was acceptable.

16. Mr. TEXIER said that in his view the Committee should accept the proposal. He believed that Portugal did in fact take its commitment under the Covenant seriously. He noted that according to the Portuguese mission a postponement had been requested in February. Why had no proper answer been given at the time?

17. Mr. TIKHONOV (Secretary of the Committee) said that in February a member of the Permanent Mission of Portugal had contacted the secretariat, saying that it would not be convenient for the Portuguese report to be considered at the current session because it would coincide with the meeting of the Commission on Human Rights. The same consideration had been expressed by other States scheduled to appear at the current session. He had explained to each of them that all the reports would be discussed towards the end of the Commission's session, after its resolutions had been adopted, and they should therefore have no difficulty attending the Committee to present their reports. It had been suggested that they should discuss among themselves any change in the order of consideration of the reports to suit their various requirements. All had said they wished their reports to be considered in the order already established by the Committee.

18. It was the practice of the secretariat, once the Committee had taken its decision, to send a note verbale immediately to all States parties scheduled for the next session, giving the dates on which their reports would be considered. The last paragraph of the note verbale stated that, if no formal notification was received to the contrary within six weeks, it would be assumed that the suggested dates were acceptable. No such notification had been received from Portugal. Up to the start of the session he had been in regular contact with the Portuguese mission and had been assured that a delegation would be attending. The last such conversation had taken place on 26 or 27 April, when it had been assumed that Portugal would be present.

19. The CHAIRPERSON said that she sensed that the Committee was willing to postpone consideration of the Portuguese report to a date in the not too distant future. Since Portugal would have difficulty in attending in August, and the extraordinary session was due to end on 1 September, it would appear that the earliest time would be in the autumn, at the Committee's November-December meeting. It would therefore be necessary to move one of the States parties due to be considered in the autumn to the following spring session in order to accommodate Portugal. The list of reports to be considered at the extraordinary session, those of Honduras, Mongolia, Sudan, Kyrgyzstan, Australia, Venezuela and Belgium, would stand. The reports due to be considered in the autumn were those of Morocco, Japan, Yugoslavia, the Syrian Arab Republic and China-Hong Kong Special Administrative Region. She proposed that the Chinese report be postponed to the following spring session and that the Portuguese report be the first to be taken up in November.

20. Mr. AHMED said that the Committee would need to know whether the suggested date in November was agreeable to Portugal.

21. The CHAIRPERSON said that, since Mr. Mendonça e Moura had agreed to Mr. Sadi's suggestion for a postponement of the order of six months and to the updating of the report, she felt that November could safely be assumed to be acceptable.

MISCELLANEOUS MATTERS (agenda item 9) (continued)

22. Mr. TIKHONOV (Secretary of the Committee) reminded the Committee that, at its afternoon meeting on Friday, 5 May 2000, it was to hear Mr. Fantou Cheru, the Special Rapporteur on structural adjustment and its impact on economic, social and cultural rights.

23. The CHAIRPERSON said that, after hearing from the Special Rapporteur, the Committee would proceed with its scheduled review, without report, of the implementation of the International Covenant on Economic, Social and Cultural Rights in the Republic of the Congo.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 3) (continued)

24. Mr. RIEDEL said that, with the Chairperson's permission, he would like to introduce a draft new paragraph 19 for insertion in the proposed General Comment on the right to health, which was intended to replace the existing paragraphs 12 and 19. The draft described the core obligations of States parties relating to the right to health, using broadly the same approach as that adopted in General Comment 13. The Committee had to make a policy decision on whether or not to include a demanding list of those obligations which all States, rich or poor, should fulfil as a bare minimum. Some developing countries might take the view that the proposed list in paragraph 19 was too exacting. However, he believed that developing countries might be able to negotiate less strict conditions on loans from international financial institutions if they could argue that excessively strict conditions would prevent them from meeting the minimum requirements laid down by the Committee on Economic, Social and Cultural Rights for guaranteeing the right to health. He therefore proposed that paragraph 19 should list the core obligations in the text circulated to the members of the Committee. Further items could be added although he felt personally that the list proposed represented the maximum that the Committee could specify while remaining within its mandate.

25. Mrs. JIMÉNEZ BUTRAGUEÑO said that retrogressive measures should not be adopted without careful consideration. Since many countries were reducing their expenditure on health, she proposed adding to the core obligations a provision similar to that at the end of paragraph 9 of General Comment 3, to the effect that States parties should take measures to the maximum extent of available resources.

26. Mr. HUNT (Rapporteur for the draft general comment) said that he agreed with Mrs. Jiménez Butragueño's view that it was important to be cautious about introducing retrogressive measures; that principle had been incorporated into General Comment 3 and re-endorsed in General Comment 13, and should be expressed in the same terms in the draft general comment on the right to health. It should be possible to reformulate the core obligations accordingly.

27. The idea of core content had been applied in General Comment 3, however, the Committee had struggled over how to incorporate it into General Comment 13 and had eventually taken the pragmatic approach of defining not the core content but the core obligations incumbent upon States parties. The Committee had decided to recommend adopting the same approach in the general comment on the right to health. However, if the Committee decided to approve the list of core obligations, it would be unfair not to insist also that richer countries fulfil their obligations relating to international cooperation under article 2, paragraph 1, of the Covenant. The two sets of obligations should be seen as two halves of a package.

28. Mr. SADI said that he was concerned that the draft general comment did not take sufficient account of possible future developments in health matters, such as those in biotechnology and cloning. The general comment should show that the Committee was aware of issues that might arise in the future, not just issues of current importance. He would also like it to be stated in the general comment that the Committee encouraged research into major health problems such as cancer and the effects of smoking.

29. The CHAIRPERSON pointed out that many of the issues raised had already been discussed at a meeting a few days previously with representatives of the World Health Organization (WHO) an other health experts. It had been agreed at that meeting that it was not possible or appropriate for the general comment to refer individually to every health problem that might need to be addressed. WHO had its own guidelines and was the organization best equipped to deal with specific health problems, whereas the purpose of the general comment was to define States parties' core obligations. She also endorsed the point made by Mr. Hunt that the general comment should emphasize that it was incumbent upon wealthier countries to assist developing countries in fulfilling those core obligations.

30. Mr. CEAUSU suggested that the idea, contained in subparagraph 3 of the draft new paragraph 19, of "measures to protect and promote the health of the whole population" should be expanded to include the idea of combating actions that could affect public health and the exercise of the right to health. It was important for States parties to be active in defending the interests of society against such actions, and against private interests - for example tobacco and alcohol companies - that represented a threat to public health.

31. Mr. RIEDEL thanked the members of the Committee for their comments and asked Mr. Ceausu to submit his proposed addition to subparagraph 3 in writing for discussion by the drafting group. Any other additions to the draft text of the new paragraph 19 should be as short and clear as possible. The plan to structure the obligations in the same way as in the General Comments on the right to food and the right to education would deal with some of the other points raised.

32. The aim of the draft general comment was not to list all the obligations that were considered important but to list only those that were absolutely essential. He agreed that the general comment should be formulated as broadly as possible in order to take account of future developments. However, it should not address such developments specifically because its purpose was to interpret existing legal obligations. The Committee's mandate was to monitor the fulfilment of those obligations by States parties; it did not extend to legislating or policy-shaping, which were a matter for States themselves or for organizations such as WHO.

33. He agreed with Mrs. Jiménez Butragueño that it was necessary to be cautious about applying retrogressive measures; however, he was unsure whether a reference to that principle should be included in the list of core obligations. The list was already sufficiently long and demanding and the need for caution regarding retrogressive measures was addressed elsewhere in the draft general comment.

34. Mrs. JIMÉNEZ BUTRAGUEÑO said that, since many countries were aiming to cut health spending, she felt it was important in the general comment to urge States to continue allocating the maximum possible resources to the right to health.

35. Mr. RIEDEL said that Mr. Pillay had passed him some minor language changes which would be incorporated into the draft text.

36. Mr. SADI asked whether it would be possible in the general comment to request any specific measures, such as the phasing-out of leaded petrol, which clearly had a devastating impact on the health of people in developing countries.

37. Mr. GRISSA said that he did not think it was possible to go as far as naming specific health risks in the general comment.

38. Mr. WIMER ZAMBRANO said that the Committee should be sure to stay within the scope of its mandate. It did not have the necessary expertise to address technical issues such as specifying what kind of petrol people should use, even if such measures seemed reasonable and obvious. Its proposals had to be strictly of a general and legal nature.

39. Mr. RIEDEL agreed that the health risk posed by leaded petrol was an important issue; however, WHO was the organization best placed to address it and was, in fact, already doing so. He endorsed the comments made by Mr. Wimer Zambrano on the subject of the Committee's mandate.

The meeting rose at 4.15 p.m.